

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

MARVIN D. HURLEY, II, a minor,
by KIMBERLY A. HURLEY, his next friend, and
KIMBERLY A. HURLEY, individually,

Plaintiffs,

v.

Civil Action No. 3:07CV14
(JUDGE BAILEY)

POTOMAC EDISON COMPANY,
d/b/a Allegheny Power,

Defendant/Third Party Plaintiff,

v.

ASPLUNDH TREE EXPERT CO.,

and

TOWNSEND TREE SERVICE CO., INC.,

Third Party Defendants.

ORDER CONFIRMING PRONOUNCED ORDER OF THE COURT

I. Introduction

Defendant, Townsend Tree Service, Inc., “Townsend” filed a Motion to Compel More Sufficient Interrogatory Answers October 24, 2007.¹ Defendant, Potomac Edison Company, d/b/a Allegheny Power, “Potomac” filed its response November 7, 2007.² Townsend filed its reply November 13, 2007.³ An evidentiary hearing and argument was held November 15, 2007.

¹ Doc. No. 55.

² Doc. No. 68.

³ Doc. No. 70.

II. Findings of Fact

Potomac presented no testimony or other evidence as to burdensomeness.

Potomac could not provide any federal cases holding any of its objections were appropriate.

III. Conclusions of Law

Potomac's objections to Interrogatory No. 5 are insufficient. The first sentence of the response is expressly prohibited by the Federal Rules of Civil Procedure. The second sentence of the response is a misstatement of the law. The third sentence of the response is not correct under the facts of this case because a three state area is not an unreasonable geographic area for the limited facts of the interrogatory. The fourth sentence is not permissible under the Federal Rules of Civil Procedure. The limitation of the response to a minor child is not reasonable under the facts of this case.

IV. Decision

Potomac shall provide a response to Interrogatory No. 5 on or before November 29, 2007.

Filing of objections does NOT stay this Order.

Townsend shall file an affidavit of reasonable expenses on or before **November 29, 2007**.

Potomac shall file any response on or before **December 6, 2007**. Potomac and its counsel shall be given an opportunity to be heard why reasonable expenses should not be awarded to Townsend by telephone on **December 7, 2007, at 10:00 a.m.**, in the Magistrate Judge Courtroom, Room 433, United States Courthouse, Twelfth and Chapline Streets, Wheeling, West Virginia. Potomac shall set up the conference call by initiating one timely conference call with such lawyers to (304)233-1348, at the time of the scheduled proceeding.

IT IS SO ORDERED.

Any objections to this Order shall be filed by **November 30, 2007**.

The Clerk of the Court is directed to provide a copy of this Order to parties who appear pro se and all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: November 15, 2007

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE